

## **REMARKS**

The present application includes pending claims 1-23 and 25-35. All of the pending claims stand rejected in the Office action mailed March 2, 2010. Claims 1, 9, 17, and 27 are amended by this response. Claims 1, 9, 17, and 27 are independent claims from which claims 2-8, claims 10-16, claims 18-23, 25, and 26, and claims 28-33 depend, respectively. The Applicants respectfully request reconsideration of claims 1-23 and 25-35, in view of the following remarks.

### **Rejection of Claims**

Claims 1, 2, 5-10, and 13-16 are rejected under 35 U.S.C. §101. Claims 1-23 and 25-35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 2003/0018745 ("McGowan") in view of U.S. 2003/0221191 ("Khusheim") and U.S. 6,029,195 ("Herz"). Applicants respectfully traverse the rejections.

#### **I. Claims 1, 2, 5-10, and 13-16 Are Directed To Statutory Subject Matter**

Claims 1, 2, 5-10, and 13-16 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Applicants have amended independent claims 1 and 9 as shown above. Applicants respectfully submit that amended claims 1 and 9 now recite that actions of the method are performed at an electronic monitoring system. Support for the amendments to claims 1 and 9 may be found, for example, at paragraphs [0042]-[0052] of the Application. Applicants respectfully submit that claims 1 and 9 are therefore tied to another statutory category, and are therefore directed to statutory subject matter. Applicants respectfully submit that the amendments to claims 1 and 9 do not add new matter. Based at least upon the above, Applicants respectfully

request that the rejection of claims 1, 3, 5-10, and 13-16 under 35 U.S.C. §101 be reconsidered and withdrawn.

## **II. The Proposed Combination Of McGowan, Khusheim, And Herz Does Not Render Claims 1-23 And 25-33 Unpatentable**

Claims 1-23 and 25-35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over McGowan in view of Khusheim and Herz. Applicants respectfully traverse the rejection.

Claim 1 now recites, in part, "receiving, at a user-designated electronic monitoring system via a communication network, at least one notification of a user request for consumption of media, each of the at least one notification comprising user-selected parameter information related to the request and at least one user-defined parameter that indicates a type of allowable use of the at least one notification by the monitoring system." Independent claims 9, 17, and 27 recite similar features. Applicants respectfully submit that the cited art does not teach at least this aspect of claim 1.

Applicants appreciate admission by the Office that "McGowan does not explicitly state the user designing [sic] which monitoring system receives the notification along with user selected parameter information which further indicates a type of allowable use at the monitoring system." See Office action of March 2, 2010 at page 6 and Office action of June 17, 2009 at page 4.

The instant Office action again relies on Khusheim, stating that "Khusheim teaches a monitoring system (Fig. 1 item 130) controlling the selecting and scheduling of additional media according to calculated statistics from received user information

(abstract) ... where the user designates whether information will be shared with the monitoring system and how much information will be shared ([0113])." *See id.* at page 6 (emphasis in original). Applicants have previously responded to this assertion. *See* Response filed July 9, 2009 at pages 10-11. Applicants respectfully note that the Office asserts that Khusheim teaches "...whether information will be shared..." and "...how much information will be shared." Applicants respectfully submit that teachings of "whether information will be shared" or "how much information will be shared" are quite different from and do not teach, suggest, or disclose designation of the recipient of information that is shared, as required by claim 1.

**In response to Applicants' arguments of July 9, 2009**, the Office action states the following, at page 2:

In paragraph [0113], Khusheim [sic] discloses "Depending on privacy concerns, the CPE may or may not send back user profile information to control center 130." Hence, if the user is a very private person, and does not want to share any information, none of the profile information will be sent back to control center 130. The control center 130 is user designated in the sense that since the user has control over whether profile information will be sent or not, the control center is user designated. By designating whether or not the control center 130 should receive profile information, the user is designating the control center 130. If the user had no control over this, and the system would automatically transmit the profile information, the control center 130 would not be user designated.

Applicants respectfully submit that the logic of the response by the Office is flawed and the Office is misconstruing the word "designated." The word "designate" may be defined as "1. To indicate or specify: point out. 2. To give a name or title to: characterize. 3. To select for a particular duty, office, or purpose: appoint." *See*

American Heritage Dictionary of the English Language, © 1979, Houghton Mifflin Company, page 357. Applicants respectfully submit that the cited portion of Khusheim does not teach, suggest, or disclose that the user designates (i.e., indicates or specifies) that information is to be shared with "control center 130," that the user gives a name or title to the "control center 130," or that the user selects or appoints the "control center 130" for a particular duty, office, or purpose. Applicants respectfully submit that there is no teaching, suggestion, or disclosure in the cited portion of Khusheim that the user even knows where any information permitted to be shared will be sent. There is no evidence that the user knows of the existence of "control center 130," or of who operates the "control center 130," or what will be done with the information that is being shared, let alone that the user indicates, specifies, selects, or appoints the "control center 130" to receive any information permitted to be shared by the user. Applicants respectfully submit that the cited portion of Khusheim does not teach a user "designating whether or not the control center 130 should receive profile information," as asserted above. (emphasis added) Instead, Khusheim at ¶[0113] simply teaches that a user may select "the amount and type of information" that is shared. The Office errs in reading into Khusheim aspects of Applicants' claim 1 not taught by Khusheim. This is made even clearer when one considers that in accordance with the requirements of Applicants' claim 1, a user will be protected from the sharing of information with a monitoring system unknown to him/her, or operated by an entity with which they specifically do not wish to have information shared. The disclosure of Khusheim does not operate or function to provide at least these benefits of the features of Applicants' claim 1, and therefore does not teach all aspects of claim 1.

Therefore, for at least the reasons set forth above, Applicants respectfully submit that Khusheim does not remedy at least this aspect of claim 1 admittedly missing from McGowan. In addition, the Office action has not even asserted, let alone demonstrated, that Herz describes, teaches or suggests at least this aspect of claim 1. Therefore, the Office action has not shown where the combination of cited references describes, teaches or suggests "receiving, at a user-designated monitoring system via a communication network, at least one notification of a user request for consumption of media, each of the at least one notification comprising user-selected parameter information related to the request and at least one user-defined parameter that indicates a type of allowable use of the at least one notification by the monitoring system," as recited in claim 1, for example. Independent claims 9, 17, and 27 recite similar features. Thus, for at least these reasons, the Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-16. Applicants respectfully submit that claim 1 is allowable over the cited art for at least an additional reason.

Claim 1 also recites, in part, "each of the at least one notification comprising user-selected parameter information related to the request and at least one user-defined parameter that indicates a type of allowable use of the at least one notification by the monitoring system." Thus, Applicants' claim 1 requires that the "at least one notification" of a "user request for consumption of media" include at least two items, 1) "user selected parameter information" **and** 2) "at least one user-defined parameter that indicates a type of allowable use of the at least one notification by the monitoring system." Applicants respectfully submit that the cited art does not teach or suggest at least this aspect of Applicants' claim 1.

The Office action concedes that both McGowan and Khusheim do not teach Applicants' claimed "at least one notification" comprising "at least one user-defined parameter that indicates a type of allowable use of the at least one notification by the monitoring system." See *id.* at page 6. The instant Office action then relies upon Herz, and states the following, at pages 6-7:

[H]owever, Herz discloses selective presentation of media to a user determined by a monitoring system according to calculated statistics based on received information from users (abstract), where a user controls the ability of third parties to access the user information (col. 52 lines 33-67)).

Applicants respectfully note that the Office simply asserts that Herz teaches "a user controls the ability of third parties to access the user information," and does not provide any explanation of how this purported teaching of Herz teaches Applicants' claimed subject matter, as required by M.P.E.P. §2142. Applicants respectfully submit that even if Applicants were to agree that Herz taught what is asserted, **which Applicants do not**, a teaching that "a user controls the ability of third parties to access the user information" is quite different from and does not teach, suggest, or disclose a system receiving "at least one notification," where the "at least one notification" comprises "at least one user-defined parameter that indicates a type of allowable use of the at least one notification by the system," as required by Applicants' claim 1. That is, Applicants' claim 1 requires that a notification sent to a system **must** include at least one user-defined parameter that indicates to the receiving system the type of use the receiving system is permitted to make of the received notification. What the Office asserts as taught at col. 52, lines 33-67 of Herz is simply a proxy server controlling access by a third party to a user and a database of user private information. The Office,

however, fails to show where Herz teaches, suggests, or discloses that the user defines "at least one parameter" that indicates an allowable "type of use," let alone that the "at least one parameter" is sent along with other information to a receiving party, and that the "at least one parameter" received by the receiving party indicates an allowed type of use of the information accompanying the "at least one parameter." Instead, the Office merely asserts that Herz teaches that a user controls access to the user and a database of user information by a third party. In addition, because the Office admits that McGowan and Khusheim also do not teach at least this aspect of Applicants' claim 1, Applicants respectfully submit that the Office has not demonstrated how and why the proposed combination of McGowan, Khusheim, and Herz teaches, suggests, or discloses at least this aspect of Applicants' claim 1. Thus, for at least this additional reason, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1. Applicants respectfully submit that claim 1 is allowable for at least an additional reason.

Claim 1 also recites, in part, "automatically selecting additional media for consumption by the user according to the at least one statistic;...." The Office action again relies on McGowan as disclosing this limitation. See March 2, 2010 Office action at page 6; June 17, 2009 Office action at page 4. Applicants have previously responded to the repeated rejection and will not repeat the arguments set forth in the prior responses again here, but hereby incorporate those prior responses herein as though set forth in full. Applicants respectfully maintain that McGowan fails to teach or suggest at least this aspect of claim 1, for at least the reasons set forth during prosecution, and those that follow.

**In response to Applicants' arguments of July 9, 2009**, the instant Office action states the following, at page 3:

McGowan explicitly states a software program automatically selecting programs to be suggested for use in scheduling where a user via user interface may then automatically fill in the scheduling with selected suggested programs ([0034]-[0035]), it is noted that while McGowan teaches a user interacting with software programming used for automatic program selection based on statistics and scheduling. McGowan teaches Artificial Intelligence rules are implemented in selecting content. Fuzzy clustering techniques, and pattern recognition routines are implemented to isolate key trends and findings. In other words, content is automatically selected for consumption by the user. The subsequent step is scheduling the selected content, which is performed by a human operator using software. One scenario which can be construed from this teaching is that by executing the AI software, programs X, Y, and Z are selected. The human operator determines that all of X, Y, and Z should be scheduled, and as a result uses the drag-and-drop software to schedule the X, Y, and Z programming. Hence, contrary to Applicant's statement, the additional media is automatically selected.

Applicants agree with the Office in its recognition, above, that "McGowan explicitly states a software program automatically selecting programs to be suggested for use in scheduling...." (emphasis added) Applicants also agree that McGowan teaches a user selecting from the programs "suggested" by the "software program" of McGowan. Applicants respectfully disagree, however, with the assertion by the Office that McGowan's teaching of a user employing a "drag and drop tool" to select from the "programs to be suggested" teaches "automatically fill[ing] in the scheduling," as asserted. Further, Applicants respectfully submit that the proposed example of the Office in which "[t]he human operator determines that all of X, Y, and Z should be scheduled" is, in fact, simply user selection of which of the "programs to be



suggested" are to be scheduled. The "VCS operator" of McGowan need not schedule all or any of the "programs to be suggested." For at least this reason, Applicants respectfully submit that the "programs to be suggested" are not available for distribution or viewing. Applicants respectfully note that the Office recognizes that McGowan discloses that the user "uses the drag-and-drop software to schedule the X, Y, and Z programming." Applicants respectfully submit that the Office does not show how and why the example of a user that "determines" that "[programs] X, Y, and Z should be scheduled," as asserted by the Office, somehow avoids the fact that the user selects the programs "X, Y, and Z." Indeed, McGowan uses the word "determine" only once, and not in reference to content. Instead, McGowan repeatedly uses the term selection in reference to choosing content from the "programs to be suggested."

Applicants respectfully submit that, as recognized by the Office, the "software program" of McGowan selects programs to be suggested to a user. Applicants also respectfully submit that such "programs to be suggested" to a user, as produced by the "software program" of McGowan, are not "media for consumption by the user." Instead, the "programs to be suggested" is simply a collection or list from which the "VCS operator" selects content to schedule. McGowan is quite clear at ¶[0033] that the software program of McGowan "provides assistance in the selection process," using the "[a]rtificial Intelligence rules," "[w]ell-known clustering algorithms," "fuzzy clustering techniques," and "pattern recognition routines" mentioned by the Office in its response. McGowan clearly teaches that "[t]his data [from isolating key trends and findings using the rules, algorithms, techniques, and routines mentioned by the Office] is converted into rules that assist - or simply offer recommendation in the selection of content for

each channel.” Indeed, as previously noted, McGowan clearly states that “[t]he AI interface additionally functions to suggest, but not control the process of content selection.” See ¶[0033].

Applicants respectfully submit that the “programs to be suggested” is not media available for “consumption” by a user, in accordance with claim 1. Applicants respectfully submit that Applicants’ claim 6 (which depends from claim 1) further clarifies “consumption” as “playing audio, displaying a still image, displaying video, and displaying data.” Applicants respectfully submit that the cited portions of McGowan do not teach or suggest that McGowan’s “content” of the “programs to be suggested” is available for “consumption” by a user (i.e., “playing audio,” “displaying a still image,” “displaying video,” and “displaying data”) until after it has been selected from the “programs to be suggested” and scheduled in a “channel” for “distribution.” McGowan teaches a process of “channelization” of content, in which content must be “channelized” to be distributed and viewed (“consumed”). See *id.* at FIGs. 1, 3, 4, ¶[0023], [0032]-[0037].

Applicants respectfully submit that, as previously noted, McGowan teaches the “VCS operator” must first select programs from the “programs to be suggested,” and then schedule the selected program for a “channel” using an interactive “drag and drop software tool.” *Id.* Applicants respectfully note that while McGowan teaches that the user may be “assisted” by the software, or receive “recommendations,” the process of “selection” and “scheduling” of content into the “channel” of McGowan is not automatic, but requires a user to manually select programs from the “programs to be suggested” and to schedule those programs on the “channel.” Only when selected for a channel

and scheduled into a channel can the content be distributed and then “consumed,” in accordance with Applicants’ claim 1.

Therefore, for at least the reasons set forth above, Applicants respectfully submit that the Office has not shown how and why McGowan teaches at least this aspect of Applicants’ claim 1. Further, the Office does not assert that the remaining cited art provides relevant teaching of this aspect of Applicants’ claim 1. Because Applicants have demonstrated that McGowan does not teach or suggest at least this aspect of claim 1, and the Office has not asserted that Khusheim and/or Herz teach or suggest this aspect of claim 1, it necessarily follows that the proposed combination of art cannot teach or suggest at least this aspect of Applicants’ claim 1. Claims 9, 17, and 27 recite similar features. Thus, for at least these reasons, the Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1, 9, 17, 27 and the claims that depend therefrom.

### **Conclusion**

In general, the Office action makes various statements regarding the pending claims and the cited references that are now moot in light of the above. Thus, the Applicants will not address such statements at the present time. However, the Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

The Applicants respectfully request reconsideration and allowance of claims 1-23 and 25-35 for at least the reasons discussed above. If the Examiner has any questions or the Applicants can be of any assistance, the Examiner is invited to contact the undersigned.

The Commissioner is authorized to charge any necessary fees, or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,

Date: June 14, 2010

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